Legal Assistance Resource Center

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H.B. 5978 -- Eviction procedures

Housing Committee public hearing – February 17, 2009
Testimony of Raphael L. Podolsky

Recommended Committee action: REJECTION OF THE BILL

H.B. 5978, which would make changes in Connecticut eviction procedure, is both unnecessary and unconstitutional; and it will interfere with and obstruct the very mediation process that has made the housing courts so successful. Connecticut's system is both fast and fair. The bill fails to appreciate the way in which the housing courts work; and it ignores the speed with which eviction cases are handled in Connecticut. The bill should be rejected.

The bill would require tenants to pay use and occupancy into an escrow account (presumably held by the court) in every eviction based on non-payment of rent and would prohibit tenants from filing special defenses if they do not pay. A companion bill (H.B. 5979), which is largely unworkable, requires that the account draw interest for "programs that aid the homeless." H.B. 5978 also eliminates "John Doe" notices to quit and provides that a summary process action against one tenant (presumably the primary tenant) binds all other occupants, without regard to whether they know about the proceeding.

* The bill is unnecessary. C.G.S. 47a-26b already provides for payment into court at the request of the landlord. In reality, few landlords ask for such payment because eviction cases are calendared so quickly that it is easier to deal with payment issues as part of housing specialist negotiations. Cases are usually scheduled for hearing 10 to 14 days after the pleadings are closed, and all evictions in Connecticut are sent to mediation before trial. The mediators, called "housing specialists," settle almost 95% of the cases, usually with a negotiated stipulated judgment. These judgments commonly require payment (directly to the landlord rather than into escrow) if the tenant is to be allowed to remain for any substantial period of time.

* The bill fails to recognize that the existing eviction system works well. Every examination of summary process over the past 30 years has concluded that summary process cases move very quickly. While a small number of cases may be lengthy, the median time from return day (when the case officially starts in court) to entry of final judgment, according to Judicial Branch data, is 18 days, and 95% of cases go to judgment within 60 days of the return day. There is no other part of the court system that comes even close to this speed of completing cases. Indeed, the bill's reference to making certain summary process actions "privileged in respect to assignment for trial" is unnecessary, since all summary process cases are sent to trial quickly.

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* The bill will upset this efficient system and result in it taking more time, not less, to obtain an eviction judgment. First, it will result in numerous hearings over the amount of use and occupancy payments to be made, with defenses about the condition of the property being at those hearings. This will require much judge time and delay trials on the merits. Second, it will overwhelm the clerk's offices with periodic payments that they must process and manage. The clerk's office are already under heavy pressure because of the rise in eviction cases, a situation likely to get worse as the economic worsens. If this bill is passed, everything will slow down.

* The bill unconstitutionally interferes with the tenant's right to defend the action. Special defenses are the primary issue in eviction cases. They are how tenants raise claims that they are relieved of the duty to pay rent because the landlord has failed to maintain the property, that the eviction is retaliatory or discriminatory, or that a balance of the equities in the case favors the tenant. Indeed, the defense that the tenant did in fact pay the rent is actually a special defense. In effect, H.B. 5978 requires the defendant, who is not the party initiating the action, to pay in order to defend. This requirement, similar to a bond to defend, unconstitutionally denies the defendant the right of access to the courts. In contrast, the existing system for requesting escrow payments was carefully drafted so as to target delay without interfering with the right to defend.

* "John Doe" notices to quit are constitutionally required. The "John Doe" provision of the existing statute is there to protect landlords as well as tenants. It was the direct result of the Superior Court judgment entered in Williams v. Carlson in 1985, after a sheriff tried to evict an occupant who had never been served with any court papers. The "John Doe" statute was adopted in 1986 because execution against non-parties had been blocked as unconstitutional. That statute established a procedure by which execution could be issued against parties whose name was not known to the landlord. This bill will de-constitutionalize the statute and return it to its pre-1986 unconstitutional state.